

**GRANT COUNTY  
LAND USE HEARING EXAMINER**

**IN THE MATTER OF**

P17-0346

Byers

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**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
DECISION**

THIS MATTER, having come on before the Grant County Hearing Examiner on December 13, 2017, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law and Decision as follows:

**FINDINGS OF FACT**

1. This is a request for a variance to the four (4) foot front yard (fence) height restriction as defined in GCC § 23.08.020(f), in order to enable construction of a seven (7) foot tall security fence along property lines inside the forty (40) foot front setback of an approximately 0.98-acre parcel in the Urban Light Industrial Zoning District of Grant County.
2. The Applicant/property owner is Jay Byers, P.O. Box 367, Ephrata, WA 98823.
3. The site address of the subject parcel is 9268 Beacon Road NE, Moses Lake, WA. It is located approximately on the intersection of Grape Drive NE and Beacon Road NE, and in a portion of Section 10, Township 19 North, Range 28 East, WM, Grant County, WA (Parcel #17-0367-000).
4. The zoning for the property is Urban Light Industrial.
5. The zoning for the neighboring parcels is: To the north, Urban Light Industrial; to the south, Urban Light Industrial; to the east, Urban Light Industrial; to the west, Urban Residential 3.
6. The Comprehensive Plan designation for the subject property is Industrial (Urban).
7. Surrounding development consists of apartments, a mobile home park, and small-scale commercial businesses.
8. Pursuant to WAC 197-11-800(6)(e), this proposal is exempt from SEPA review.
9. Pursuant to and in compliance with Grant County Code § 24.08, a critical areas review of the project area was conducted as part of the application process for this proposal. The subject parcel was found to be not located in, nor to contain, any critical areas.
10. A Public Notice of Application & Public Hearing containing information about this project was published in the Columbia Basin Herald newspaper on November 13, 2017, was mailed to property owners within 300 ft. of the subject parcel on November 9, 2017, was posted on the subject site by November 13, 2017, and remained posted until the open record public hearing date. Information about this project was also sent to all applicable agencies of jurisdiction for their review and comments on November 9, 2017. The public comment period ended on November 29, 2017.
11. The following agencies and County departments provided comments:
  - 11.1 Grant County Fire Marshal responded on November 9, 2017;
  - 11.2 Grant County Public Works Department responded on November 9, 2017;

- 11.3 Grant County Assessor's Office responded on November 13, 2017;
- 11.4 U.S. Bureau of Reclamation responded on November 20, 2017.
- 12. The following agencies were notified but did not respond:
  - 12.1 Grant County Building Department;
  - 12.2 Grant County Health District;
  - 12.3 Grant County Emergency Management;
  - 12.4 Grant County Auditor's Office;
  - 12.5 Grant County Treasurer's Office;
  - 12.6 Grant County Sheriff's Office;
  - 12.7 Grant County Fire District #5;
  - 12.8 Grant County P.U.D;
  - 12.9 Grant County Noxious Weed Control Board;
  - 12.10 City of Moses Lake, WA;
  - 12.11 Moses Lake Irrigation & Rehabilitation District;
  - 12.12 Grant County International Airport.
- 13. **Agency Comments:** The following is a summary of comments received:
  - 12.1 **Grant County Fire Marshal:**
    - 1. No adverse comments or concerns as far as the variance is concerned. The entrance gate to the property needs to be a minimum 20' wide, it is stated in the letter that the gate will be 30' wide, this is acceptable. A Knox Box containing the means to make entry through the gate will need to be provided for the fire department.
  - 12.2 **Grant County Public Works Department:**
    - 1. No fencing material or any related appurtenances shall be placed in, on or overhand into the County road Right-of-Way.
  - 12.3 **Grant County Assessor's Office:**
    - 1. Parcel 17-0367-000 is a .94 acre parcel of land with a shop/garage business; owner is Jay & Rena Byers.
    - 2. No issues.
  - 12.4 **U.S. Bureau of Reclamation:**
    - 1. Although this proposal is within the Project and the District, it does not involve any Project facilities. Therefore, we have no comment regarding this proposal's impact on Project facilities or associated rights-of-way.
- 13. No public comments were received.
- 14. This application was determined to be technically complete on November 6, 2017.
- 15. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. No critical areas were found to be located within 300 ft. of the project site.
- 16. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
- 17. The subject parcel is located within Moses Lake Urban Growth Area.
- 18. The subject parcel is located in the Urban Light Industrial (ULI) Zoning District.

19. Grant County Code § 23.12, Table 1 requires a forty (40) foot front setback in the Urban Light Industrial Zoning District.
20. Pursuant to GCC § 23.08.020(f), fences, walls, hedges, and similar enclosures not exceeding forty-eight (48) inches in height shall be permitted in any front yard. Thus, the maximum allowed front yard fence height (in any zoning district) is four (4) feet. The applicants seek a variance to increase the allowable front yard fence height to seven (7) feet in order to construct a six (6) foot high security fence with one (1) foot of security wire along the property lines inside the 40-ft. front setback of the subject parcel.
21. While the application materials state that a six (6) foot fence is being requested, upon clarification from the applicant via phone conversation on Wednesday, November 15, 2017, the fence will be seven (7) feet high with six (6) of chain link and roughly one (1) foot of security wire.
22. On September 26, 2017, the applicant met with the Grant County Planning Department. The Department informed the applicant of the plans to adopt an industrial fencing standard in the early part of 2018 and that these standards may provide relief to the forty (40) foot front setback on the subject parcel. The applicant decided to proceed with the variance process.
23. On September 27, 2017, the applicant's representative advised the Planning Department that the fence would be going up the following week (the week of October 1, 2017) due to the Cryptocoin company needing security. The representative was explicitly told that any work performed without approval and issuance of land use and/or building permit would be subject to Code Enforcement. Work began on the proposed fence and building prior to County approval. This included removing the existing fencing and placing 6 foot tall poles for the proposed fence. A "Stop Work" order was issued on October 3, 2017.
24. On October 25, 2017 the applicant visited the Grant County Planning Department to discuss cutting the existing poles down to the permissible four (4) feet to construct a temporary fence to secure the property until a decision was issued on the subject Variance application. Pursuant to GCC § 23.08.020(f), fences, walls, hedges, and similar enclosures not exceeding forty-eight (48) inches in height shall be permitted in any front yard and as such, the four (4) foot proposal would comply with existing code requirements. It is important to note that Mr. Byers was made aware of the fact that any security wire would be included in the height of the fence.
25. The Applicant is leasing the property and existing building to Miners United, a Cryptocoin Mining company, for their use. Pursuant to GCC 23.04, Table 3 Warehouse Facilities are an allowed use in the ULI Zoning District, subject to Site Plan Review.
26. Planning Department staff conducted an on-site visit on November 14, 2017.
27. Information about this application was sent to all applicable agencies of jurisdiction for their review and comments. No adverse comments were expressed by any agency that would prohibit development.
28. The applicant has submitted a variance application for consideration by the Grant County Hearing Examiner. The applicants have requested a variance from a Performance & Use Standard as defined in GCC § 23.08.020(f), in order to enable construction of a seven (7) foot tall security fence along the property lines inside the forty (40) foot front setback of the subject parcel, which is in the Urban Light Industrial (ULI) Zoning District. The purpose of the fencing is to provide security for a proposed Data Center. The applicants seek a Variance to the four (4) foot front yard height restriction for fences to allow for construction of a security fence as proposed.
29. The applicants have indicated that unique circumstances exist in that the proposed fence is necessary. Construction of an appropriate seven (7) foot high fence for security as has been proposed would allow the applicants to better secure and protect their lessee's property in the facility.
30. Based on the review, comments, and analysis, and subject to the following proposed Conditions of Approval, the Hearing Examiner determines that the requested variance does not comply with the Criteria

of Approval for a variance as specified in GCC § 25.08.060(b). The approval criteria have been outlined below:

- 30.1 Special conditions and circumstances do exist that are peculiar to the land such that literal interpretation and application of the provisions of GCC Titles 22, 23, and 24 would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the terms of GCC Titles 22, 23, and 24.
  - 30.1.1 While the subject parcel is located on the corner of Beacon Road NE and Grape Drive, the survey provided in the application materials states a distance of 85.3 feet between the western property line (adjacent to Grape Drive) and the building. A forty (40) foot setback would be possible on this side. There is a distance of roughly forty five (45) feet from the southern property line (adjacent to Beacon Road) to the front of the building. A fence placed at the required forty (40) foot setback would leave five (5) feet of space. A decreased setback on the southern property line would allow reasonable relief. There is a six (6) foot security fence on the front property line of the parcel adjacent to the eastern property line. The fence was constructed after May 2017, the site has no land use permit history and as such, the fence is illegal non-conforming. Other six (6) foot fencing in the area appears to have been in place prior to the year 2000.
- 30.2 Allowing the variance will be in harmony with the intent and spirit of GCC Titles 22, 23, 24.
  - 30.2.1 Granting the proposed variance will not be in harmony with the intent and spirit of GCC Titles 22, 23, and 24 as the applicant was informed of the code requirements for fencing and submitted a variance for consideration, yet began construction on the proposed fence prior to County land use approval. To address the applicant's response, the proposed fence would provide security for the use of the warehouse facility. A warehouse facility is an allowed use in the Urban Light Industrial (ULI) Zoning District, subject to Site Plan Review.
- 30.3 A variance is necessary for the preservation and enjoyment of a property right possessed by other property in the same vicinity or district, but which is denied to the property in question because of special circumstances on that property.
  - 30.3.1 While the property's location as a corner lot does create the special circumstance of having two (2) frontages, a variance is not necessary for the preservation and enjoyment of property rights possessed by other owners because the applicant began construction on a fence that violated Grant County Code despite having been informed of the code requirements that existed on the property and despite being aware of the variance process that, if approved, would allow him to construct a legal fence.
- 30.4 The special conditions and circumstances described in Criteria #1 above are specifically related to the property and are the result of unique conditions such as specifically irregular lot shape, size, or natural feature, and the application of GCC Titles 22, 23, or 24, and not, for example, from deed restrictions or the applicant's own actions.
  - 30.4.1 The special circumstance of having two (2) frontages is unique to this property. The application of GCC Title 23 requires that both the western and the southern frontages have a forty (40) foot setback for fences that exceed forty-eight (48) inches in height in the ULI Zoning District. The survey states an 85.3 foot distance from the building to the western property line. The survey depicts a distance of roughly forty five (45) feet from the southern property line to the existing building. The western front of the property can accommodate the forty (40) foot setback. The southern front would benefit from a decreased setback due to the location of the existing building at forty five (45) feet from

the property line. The poles for the proposed fence appear to have been placed on or around October 3, 2017 at a zero (0) foot setback, prior to County Land Use approval. There are no special circumstances that support a height variance for the fence.

- 30.5 The granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Chapter to other lands, structures, or buildings under similar circumstances.
  - 30.5.1 Approval of this variance would confer on the owner a special privilege due to the fact that construction began on the fence prior to County land use approval. The granting of the variance would allow the applicant to continue work on the fence that was placed illegally despite being informed of the code requirements.
- 30.6 The variance requested is the minimum necessary to afford relief.
  - 30.6.1 The request of a seven (7) foot tall fence with a zero (0) foot setback is not the minimum necessary to afford relief to the forty (40) foot front setback. As discussed in Criteria of Approval #1, the distance to western frontage along Grape Drive from the building is 85.3 feet. This frontage would allow seven (7) foot fence at a setback of forty (40) feet. While a decreased setback on the southern property line along Beacon Road would be beneficial, decreasing the setback from forty (40) to zero (0) feet is not the minimum distance necessary to afford relief.
- 30.7 To afford relief the requested variance will not create significant impacts to critical areas and will not be materially detrimental to the public welfare, injurious to the right of other property owners in the vicinity, or contrary to the public interest.
  - 30.7.1 No critical areas were found to be present on the parcel. The variance, if approved, would not be detrimental to public welfare, injurious to the right of adjacent property owners, and would not be contrary to the public interest. As the poles stand now, they are compliant with GCC 23.12.110(c) Vision Clearance at Intersections.
- 30.8 The variance will not permit a use prohibited by GCC Title 23 in the district in which the subject property is located.
  - 30.8.1 The variance will not allow a use prohibited in the Urban Light Industrial Zoning District.
- 31. The staff report, application materials, agency comments and the entire file of record were admitted into the record.
- 32. Appearing and testifying on behalf of the applicant was Jay Byers. Mr. Byers is the property owner and applicant. Mr. Byers testified that the property is his rental property and that the use needs increased security. He testified that he didn't know the fence was going in until he saw the posts. He testified that there will be transformers and cooling systems located outside of the structure which could pose a risk to persons who may enter the property.
- 33. Also speaking on behalf of the applicant's Attorney, Mitchell Heaps. Mr. Heaps argued that a four foot fence is not a security fence but is nearly a residential fence and not appropriate for light industrial use. He stated his client cannot get insurance until they get a security fence. He stated there is a neighboring property that has a seven foot fence.
- 34. Staff indicated that the neighboring property referred to by Mr. Heaps does have a seven foot fence that was installed illegally and without a permit.
- 35. No member of the public testified at this hearing.

36. The Grant County Hearing Examiner considered all evidence within the record in rendering this decision.
37. Any Conclusion of Law that is more correctly a Finding of Fact is incorporated herein as such by this reference.

### CONCLUSIONS OF LAW

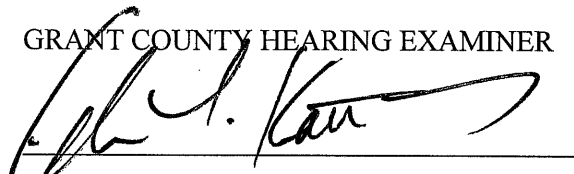
1. The Hearing Examiner has been granted authority to render this Decision.
2. The proposed use is not consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. The proposal does not conform to the standards specified in the Grant County Code.
4. The use does not comply with all required standards as specified in the Grant County Code.
5. The proposed use is contrary to the intent or purposes and regulations of the Grant County Code and the Comprehensive Plan.
6. This proposal does not comply with Comprehensive Plan and the zoning code.
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

### DECISION

Based upon the above noted Findings and Fact and Conclusions of Law, request for variance, P 17-0346, is hereby **DENIED**.

Approved this 21<sup>st</sup> day of December, 2017.

GRANT COUNTY HEARING EXAMINER

  
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Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.